

LC 247272

No. 247,272 **11**
INDEFINITE TERM LEASE

THIS LEASE made this 1st day of October, 1984, between BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation, hereinafter called "Lessor", and MISTY COVE HOMEOWNERS ASSOCIATION,

whose post office address is 5021 Ripley Lane N., Renton, Washington 98055, and whose billing address is c/o CDC Mgmt. Service Inc., 11061 NE 2nd #107, Bellevue, Washington 98004, hereinafter called "Lessee",

WITNESSETH:

In consideration of the covenants hereinafter contained to be kept and performed by Lessee, Lessor hereby leases to Lessee upon the terms and conditions hereinafter set forth the following described premises situate in the City of Quendall, County of King, State of Washington:

All that part of the premises of the said Lessor as shown colored red on the print hereto attached, marked Exhibit "A" dated August 10, 1984, and made a part hereof.

USEPA SF



1338142

SAVING AND RESERVING to Lessor, its successors and assigns, the right to construct, maintain and operate a railroad track or tracks or to construct, maintain and use or permit others to construct, maintain and use buildings or other structures for railroad purposes located or to be located upon any part of the above-described premises not occupied by the buildings and structures hereinafter mentioned; to construct, maintain and use or permit to be constructed, maintained and used by others any existing or additional pipe, telephone, telegraph or power transmission line, or water or sewer system, or other such facilities, over, on or beneath the said premises; to make any change in grade or location of its railroad or any of its tracks, or to rearrange its station facilities, or to use the said premises or any part thereof for railroad purposes; to allow the placement of signs and signboards for commercial or other purposes upon the leased premises so long as the placement of such signs or signboards does not interfere with the operation of Lessee's business on said premises; and further saving and reserving to Lessor or its agent the right to enter thereon for any one or more of such purposes without payment to Lessee of any sum for damage of any nature which may be caused thereby.

Lessee hereby leases said premises from Lessor for the indefinite term hereof subject to the covenants and promises following, which Lessee agrees to observe and perform, to-wit:

1. Lessee shall use and occupy said premises for the sole and exclusive purpose of constructing, maintaining, and operating thereon a fenced parking area.

No other buildings, structures, additions, alterations or improvements shall be erected or made on the premises by Lessee or at the direction of Lessee, save with the express permission of Lessor in writing and at the sole cost of Lessee.

2. Lessee shall pay annually, in advance, as rental for said premises the sum of One Hundred and No/100 Dollars (\$100.00).

The billing or acceptance by Lessor of any advance rental hereunder shall not imply any definite term to this lease nor will it serve to extend this lease for the period of time covered by such rental payment or otherwise operate to restrict either party hereto from terminating this lease in accordance with the provisions of paragraph 15.

3. Lessor reserves the right to change the rental stipulated herein at any time while this lease remains in effect.

4. (a) Lessee shall pay all taxes, license fees and other charges (see paragraph 4 (b) below) for payment of special assessments for public improvements) which may become due or which may be assessed against said premises, against Lessee, against the business conducted on said premises or against any and all improvements placed thereon during or for the period of the actual term hereof, even though such taxes, license fees or other charges may not become due and payable until after expiration or cancellation of this lease. Lessee shall reimburse Lessor for any such taxes, license fees or other charges which may be paid by Lessor promptly upon the presentation by Lessor of bills for the amount thereof, and in default of such reimbursement, all sums so paid by Lessor shall be deemed to be and shall be treated as additional rental and recoverable as such hereunder.

(b) In the event the premises hereby demised, or any part thereof, shall be subject to any special assessment for any public improvement or improvements and said assessment is in the amount of Five Hundred Dollars (\$500.00) or less, Lessee shall reimburse Lessor in full, promptly upon the presentation by Lessor of bills for the amount thereof. In the event the amount of said assessment exceeds Five Hundred Dollars (\$500.00), the rental herein reserved and stipulated to be paid by Lessee shall be automatically increased by an amount equal to twelve percent (12%) per annum of the total amount of said assessment.

5. Lessee shall not place, or permit to be placed, or to remain, any material, structure, pole or other obstruction within 8½ feet laterally of the center line or within 23 feet vertically from the top of the rail of any track; provided that if by statute or order of competent public authority greater clearances shall be required than those provided for in this paragraph 5, then Lessee shall strictly comply with such statute or order. However, vertical or lateral clearances which are less than those hereinbefore required to be observed but are in compliance with statutory requirements will not be or be deemed to be a violation of this clause. Lessee agrees to indemnify Lessor and save it harmless from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of any breach of the foregoing or any other covenant contained in this agreement.

Should either or both the lateral and vertical clearances hereinbefore required to be observed be permitted to be reduced by order of competent public authority, Lessee hereby agrees to strictly comply with the terms of any such order and indemnify and hold harmless Lessor from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of or as a result of any such reduced clearance.

Lessor's operations over the track with knowledge of an unauthorized reduced clearance shall not be or be deemed to be a waiver of the foregoing covenants of Lessee contained in this clause or of Lessor's right to recover for such damages to property or injury to or death of persons that may result therefrom.

6. Lessee, at Lessee's sole cost and expense, shall install and maintain adequate facilities for fire protection in all buildings and structures upon said premises. Lessee also, at Lessee's sole cost and expense, shall observe and comply with all the rules, regulations and orders of any duly constituted authority and of any board of fire underwriters having jurisdiction of said premises and all provisions of any fire insurance policy covering said premises.

7. Lessee shall not permit the existence of any nuisance on said premises; shall maintain and keep the same in proper, clean, safe and sanitary condition and free and clear of any explosive, flammable or combustible material which would increase or tend to increase the risk of fire, except for such material as may be necessary to Lessee's business; and further, Lessee shall keep, observe and comply with all federal, state and local regulations, ordinances and laws, and with the regulations of any duly constituted legal authority having jurisdiction of the premises, and at Lessee's sole cost shall make any and all improvements, alterations, repairs and additions and install all appliances required on said premises by or under any such regulations, ordinances or laws. If, as a result of Lessee's occupancy of the premises and its operations hereunder, any such regulation, ordinance or law is violated, Lessee shall protect, save harmless, defend and indemnify Lessor from and against any penalties, fines, costs and expenses, including legal fees and court costs incurred by Lessor, caused by, resulting from, or connected with such violation or violations. Lessee shall not place or permit to be placed any advertising matter upon any part of said premises or upon any improvements thereon except such as is necessary to advertise Lessee's own business.

8. Lessee shall comply with all applicable laws and ordinances and all rules, regulations and requirements of any governmental authority promulgated thereunder controlling environmental standards and conditions on the premises. If, as a result of Lessee's occupancy of the premises and its operations hereunder, any such law, ordinance, rule, regulation or requirement is violated, Lessee shall protect, save harmless, defend and indemnify Lessor from and against any penalties, fines, costs and expenses, including legal fees and court costs incurred by Lessor, caused by, resulting from or connected with such violation or violations.

9. Lessee, at Lessee's sole cost and expense, shall keep the premises hereby demised in good condition and shall make all repairs and renewals that from time to time may be necessary to keep any improvements which may be located thereon in good condition and repair and ready and fit for occupancy.

10. (a) It is understood by the parties that said premises are in dangerous proximity to the tracks of Lessor and that property on said premises will be in danger of injury or destruction by fire incident to the operation, maintenance or improvement of the railway, and Lessee accepts this lease subject to such dangers. It is therefore

agreed, as one of the material considerations of this lease without which the same would not be granted, that Lessee assumes all risk of loss, damage or destruction by fire to buildings or contents or to any other property brought upon or in proximity to said premises by Lessee, or by any other person with the consent or knowledge of Lessee, without regard to whether such fire be the result of negligence or misconduct of any person in the employ or service of Lessor or of defective appliances, engines or machinery, except to the premises of Lessor and to rolling stock belonging to Lessor or to others, and to shipments of third parties in the course of transportation. Lessee hereby indemnifies and agrees to protect Lessor from all such loss, damage or destruction to property, including claims and causes of action asserted against Lessor by any insurer of said property.

(b) Lessee also agrees to indemnify and hold harmless Lessor for loss, damage, injury or death from any act or omission of Lessee, Lessee's invitees, licensees, employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation while on or near said premises; and if any claim or liability, other than from fire, shall arise from the joint or concurring negligence of both parties hereto, it shall be borne by them equally.

11. It is agreed that the provisions of paragraphs 5 and 10 are for the equal protection of any other railroad company or companies, including National Railroad Passenger Corporation (Amtrak), heretofore or hereafter granted the joint use of Lessor's property, of which said premises are a part.

12. (a) Without the written consent of Lessor, Lessee shall not assign this lease or any interest therein, or sublet, and no heir, executor, administrator, receiver, master, sheriff, trustee in bankruptcy, or other assignee by operation of law shall assign or sublet without such written consent.

(b) In the event of assignment of this lease, Lessor, having no advice to the contrary, shall at such time credit all unearned rental hereunder to the assignee. Any other disposition of unearned rental will be made by Lessor only upon the joint written request of both Lessee and Lessee's assignee at the time of submitting said assignment to Lessor for its consent.

13. If, because of any act or omission of Lessee, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against Lessor or any portion of the demised premises, Lessee shall, at its own cost and expense, cause the same to be discharged of record within thirty (30) days after written notice from Lessor to Lessee of the filing thereof; and Lessee shall indemnify and save harmless Lessor against and from all costs, liabilities, suits, penalties, claims and demands, including legal fees and court costs, resulting therefrom.

14. Each and all of the covenants and promises made by Lessee herein are material considerations herefor, and upon the breach or non-performance by Lessee of any of the said covenants or promises, Lessor, at its option, may re-enter said premises, or any part thereof in the name of the whole, upon ten (10) days' written notice to Lessee, and may have, repossess and enjoy the same as of its former estate, and may terminate this lease and all rights hereby granted. A waiver by Lessor of a default shall not be deemed a waiver of any subsequent default of Lessee. If the default shall consist of nonpayment of rental or taxes, or other charges, at the time of termination of this lease in accordance with the provisions of this clause, such nonpayment of rental and taxes shall, until paid, constitute a lien upon said structures, improvements and property owned by Lessee and the lien may be foreclosed according to law. Lessee shall not remove said structures, improvements or property until said rental, taxes or other charges are paid, unless directed to do so by Lessor.

15. Notwithstanding any requirement herein for payment of rental in advance for a period in excess of one month, it is further agreed that either party may terminate this lease at any time for any reason upon giving the other party not less than thirty (30) days' written notice of such termination; provided, however, that rent shall be paid by said Lessee to the date of termination fixed by said notice. Upon the date of termination of this lease, Lessee shall, at its own sole cost and expense, remove or cause to be removed all buildings, structures, foundations, footings, materials, signs or signboards, debris or other articles or facilities owned or used by Lessee or placed on, above or below the surface of the premises by Lessee or by any person, firm or corporation or former Lessee. Lessee agrees to restore and level the premises to a condition satisfactory to Lessor.

It is expressly understood by Lessee that until such time as the premises are surrendered to Lessor free and clear of all buildings, structures, foundations, footings, materials, signs or signboards, debris or other articles or facilities not belonging to Lessor and the premises are restored to a neat and orderly condition satisfactory to Lessor, Lessee shall be liable to Lessor for such rental, including taxes, as Lessor may from time to time determine. Lessee shall also be liable to Lessor for any and all losses and/or damages which Lessor may sustain or become liable for resulting from the failure of Lessee to restore the premises to a neat and orderly condition. Lessor may at its own sole election appropriate any property or improvements remaining on the demised premises for its own use without compensation to Lessee, or may dispose of any such property or improvements without any liability whatsoever to Lessee and charge Lessee for all cost and expense incidental to such removal.

16. All notices hereunder to be given by Lessor to Lessee may be effectually given by letter from Lessor or its agent or attorney forwarded by Certified Mail—Return Receipt Requested, postage prepaid, addressed to Lessee at Lessee's post office address above stated or at such address as Lessee may later give Lessor in writing.

17. All notices hereunder to be given by Lessee to Lessor may be effectually given by letter from Lessee or Lessee's agent or attorney forwarded by Certified Mail—Return Receipt Requested, postage prepaid, addressed to Lessor's Industrial Development and Property Management Department at 176 East Fifth Street, St. Paul, Minnesota 55101.

18. Nothing herein contained shall imply or import a covenant on the part of Lessor for quiet enjoyment.

19. Lessee accepts the leased premises subject to any and all existing permits, licenses, leases, easements, railroad facilities, pipelines, telephone, telegraph, communication, power and signal lines or any other similar facilities, together with any future installations thereof provided such future installations do not unreasonably interfere with Lessee's use of the leased premises.

20. The invalidity or unenforceability of any provision of this lease shall not affect or impair any other provision.

Subject to the foregoing provisions, this lease and all of the covenants and promises thereof shall inure to the benefit of and be binding upon the parties hereto and their executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this lease, in duplicate, the day and year first hereinabove written.

In Presence of:

BURLINGTON NORTHERN RAILROAD COMPANY

By *T. J. Farrell*
~~General Manager Leases~~

MISTY COVE HOMEOWNERS ASSOCIATION

By (b) (6)

Title PRESIDENT

LC 247272

MISTY COVE HOMEOWNERS ASSOC.
FOR PARKING

BAXTER SPUR.

Timber
Line

1595.608 ft.

5+19 Ctr. 38' crossing
P.S. 923+77.2

3+77 Ctr. 22' crossing

8 @ 37'
5 6' 0"

921+48 Ctr. 10' pl. crossing
4" C.I.P. Per # 99091

5.5. 920+81.2
M.P. 6+3457

1+64. End Ry Co. C.R. 19843

N. 75° 52' 27" E
531.86

18+25 King Co. 4" water.
18+90 O.H. Tel. X-9 per 27731E
H.B. Ld. 78' 2" oil
Inner quad rail

4° C. No 6A T.A. 43° 48'
Δ 31° 48' 73 723.097

LANDS

Industry 1425'-100#

18" gravel
KENNETHAILE

TO RENTON

BOULEVARD



150+00 Side

JOHN PUS DIRECT

22-60 Ctr. 39
Permit 97958

JOHN PUS DIRECT

M.H.

15" I.P. 84" RCP

Metro.

Eastside

RIPLEY

TO WOODVILLE
LANE
15" RCP
sewer
interce

EXHIBIT "A"

BURLINGTON NORTHERN RAILROAD COMPANY



Indicates land leased

Containing 560 sq.ft. more or less

QUENDALL, KING, WA.
city county state

STR. 1"=100' 8-1084
map scale date

SEATTLE REGION PACIFIC DIVISION

ORIGINAL

LC 247272.01

SUPPLEMENT TO LEASE NO. 247,272

BY MUTUAL AGREEMENT, the description of the property leased to

MISTY COVE. HOMEOWNERS ASSOCIATION by

BURLINGTON NORTHERN RAILROAD COMPANY, at or near Quendall
King County, State of Washington, under
Lease No. 247,272, dated October 1, 1984 is hereby amended to

read as follows:

All that part of the premises of the said Lessor as shown colored red and yellow on the print hereto attached, marked Exhibit "A" dated July 10, 1989, and made a part hereof.

Lessee agrees to use that portion of said premises shown in yellow for non-exclusive roadway only and shall assume all responsibility for the construction, liability, drainage, and maintenance of the roadway. Lessor, its employees, agents, designees, licensees, assigns and lessees shall be permitted the use of said roadway at no charge in common with Lessee.

Lessee further agrees no use is permitted within twenty (20') feet from the centerline of Lessor's track and shall place a suitable barricade or berm of sufficient height and character to prohibit such use.

The annual rental in said agreement is hereby fixed at
Dollar,
(\$) per annum, effective

All other terms and conditions of said lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this agreement as of

this 16th day of July, 19 89.

BURLINGTON NORTHERN
RAILROAD COMPANY

By Joseph L. Branson
Regional Manager - Real Estate
Regional Director Property Management

In presence of:

MISTY COVE. HOMEOWNERS ASSOCIATION

(b) (6)

7/19/89

Secretary, Misty Cove

Title Association President

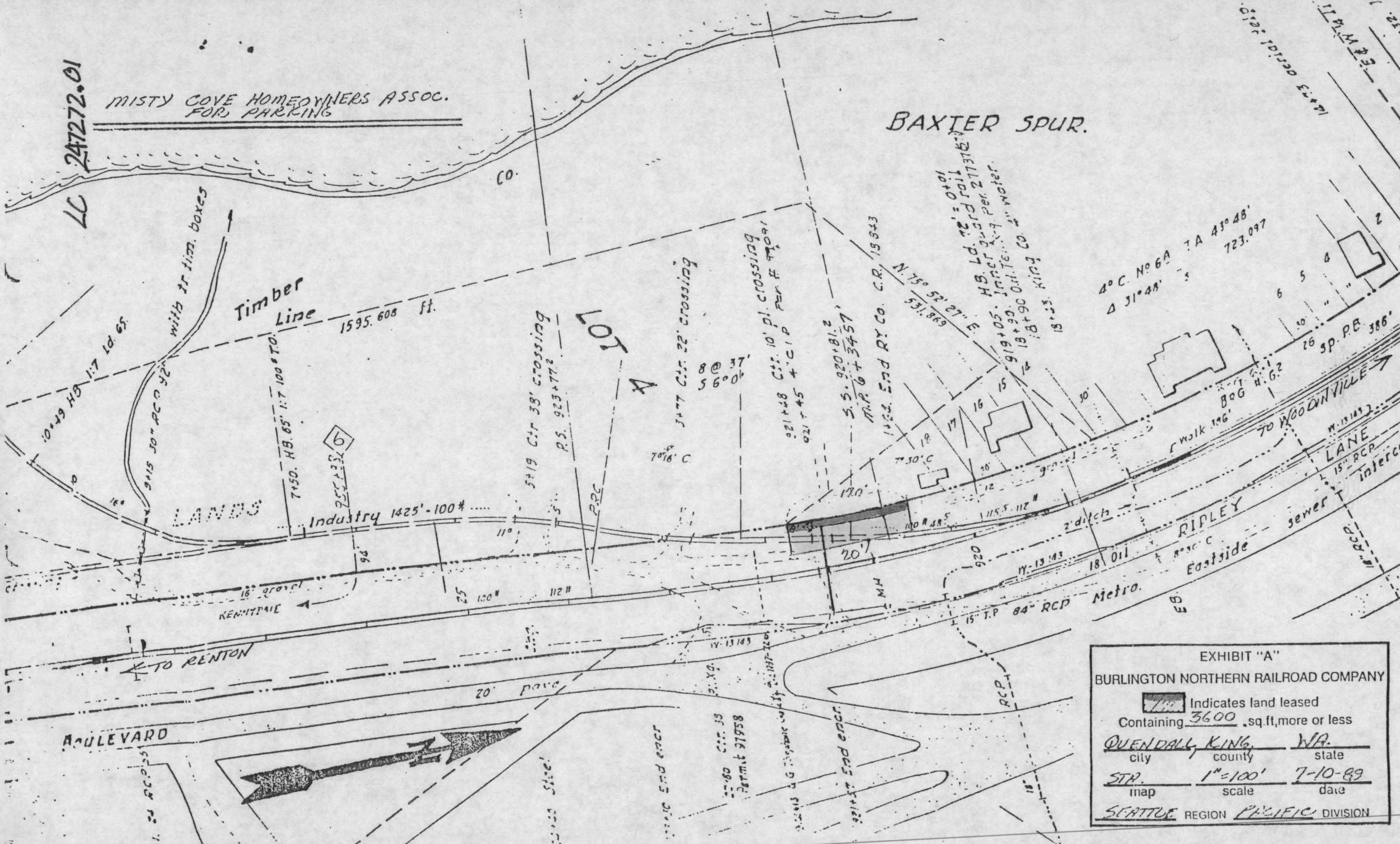



EXHIBIT "A"

BURLINGTON NORTHERN RAILROAD COMPANY

 Indicates land leased

Containing 3600 sq. ft. more or less

QUENDALL, KING, WA.

city county state

STA. 1"=100' 7-10-89

map scale date

SEATTLE REGION PACIFIC DIVISION

RENTAL CALCULATION WORKSHEET

Lessee: Misty Cove Homeowners Asn
Lease Number: 247272
Location: Quendall, Wa

Term: Indefinite
Area: 3,600 sq ft
Purpose: fenced parking area

Transfer from:
Reissue from:
Lease Manager: F L Branson
Revision Date 4-6-1992

Present Rental Basis Established Date 10-1-1984

Annual Rental	Area Sq Ft	% Return	Value Sq Ft
100.00	3,600	.12	\$ 0.23

Proposed Rental

Area Sq Ft	Value Sq Ft	% Return	Annual Rental
			\$ 0.00

Rent set at Minimum/Rounded To \$ Effective Date

Market Data

Lease No.	Lessee	Use	Term	Date	Rent	Area	% Return	Value Sq Ft

Comments:

RENTAL CALCULATION WORKSHEET

Lessee: Misty Cove Homeowners Association
 Lease Number: 247272
 Location: Quendall, Wa

Term: Indefinite
 Area: 3600 sq ft
 Purpose: Fenced parking area

Transfer from:
 Reissue from:
 Lease Manager: L L Seyda
 Revision Date 11-18-1992

Present Rental Basis Established Date 10-1-1984

Annual Rental	Area Sq Ft	% Return	Value Sq Ft
100.00 600 —	3,600	.12	\$ 0.23

Proposed Rental

Area Sq Ft	Value Sq Ft	% Return	Annual Rental
			\$ 0.00

Rent set at Minimum/Rounded To \$ Effective Date

Market Data

Lease No.	Lessee	Use	Term	Date	Rent	Area	% Return	Value Sq Ft

Comments:

C A T E L L U S



August 26, 1996

Misty Cove Homeowners Association
c/o Wendell Hedges, Inc.
P.O. Box 3666
Bellevue, WA 98009

RE: Lease #247,272 Location: Quendall, WA

Dear Lessee:

This is in regard to the rental established for the above captioned lease.

We are presently reviewing rentals on our system and have determined from current data that the rental should be \$600.00 per annum, payable annually in advance. This new rental will be effective October 1, 1996, and you will receive a statement with a return envelope shortly before then.

As a matter of clarification, quoting the rent for a specific period and payment in advance does not convert the lease to a definite term.

This letter is a supplement to your lease, which will remain in effect except as hereby amended.

Sincerely,

Rod Peterson
Regional Property Manager
(206) 625-6359